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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/619,051
Filing Date: July 14, 2003
Appellant(s): SALIB ET AL.

MAILED

SEP 27 2005

GROUP 3600

Kevin G. Mierzwa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 July 2005 appealing from the Office
action mailed 24 November 2004.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 13 and 16 - 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Chubb et al. (US 6,593,849 B2).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 2, 5, 6 - 13, and 16, Chubb et al. teaches operating a control system for an automotive vehicle (10; fig. 1) comprising determining a relative roll angle (col. 4: 60 – col. 5: 2 at least); initiating a wheel departure angle determination when the

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angle reaches a threshold and controlling a safety system (using item 18) in response to the wheel departure angle (see fig. 3; note col. 5: 52 – 62 at least); Chubb further teaches determining the vehicle is in a transition (when the vehicle wheel is detected as lifted; note abstract at least); determining a roll signal (by way of item 34 in fig. 1); determining a double wheel lift (as illustrated in fig. 1, two of the wheels are elevated; note col. 2: 44 – 46 at least); applying a brake pressure to prevent rollover when the vehicle is bouncing (col. 1: 22 – 26; col. 2: 59 – 63; and col. 3: 40 – 46 at least).

Regarding claims 3, 4, 17, and 18, Chubb et al. further teaches the vehicle transition being a right to left or a left to right transition (Chubb teaches lateral acceleration using item 32 and sway bar characteristics in figs. 2A – 2F at least).

Allowable Subject Matter

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Regarding Appellant's argument that the Chubb reference (USPN 6,593,849 B2) not teaching relative roll angle determination, the Examiner respectfully disagrees. Chubb teaches a roll rate sensor 34 (see fig. 1) and at column 3, lines 5 – 37 determination of relative roll angle; such a teaching is further supported in column 4, line 56 through column 5, line 1 at least).

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Appellant further argues, because no relative roll angle is determined, no threshold is taught by Chubb. Again, the Examiner respectfully disagrees. Chubb's abstract, column 1, line 56 – column 2, line 4 and column 5, lines 52 – 58 support such an argument. It is also noted Chubb teaches a system that actuates a second check for wheel lift.

Yet, Appellant argues no wheel departure angle is determined and therefore controlling a safety system in response thereto. The Examiner disagrees because item 18 in fig. 1 of Chubb performs such a control upon determination of the wheel departure (lift). Note Chubb's col. 2, lines 49 – 63 wherein item 18 is at minimum utilized as a stability control system and in counteracting rollover by controlling a change in steering angle.

For at least the above reasons, it is the Examiner's position the rejection of claim 1 using Chubb is proper. Claims 2 – 7 are rejected as standing or falling with respect to claim 1.

Appellant argues Chubb does not teach double wheel lift. The Examiner disagrees because such a teaching is clearly illustrated in fig. 1 and supported in col. 2, lines 44 – 46).

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Regarding Appellant's argument of Chubb not teaching determination of vehicle bouncing, the Examiner's interpretation is such that Chubb's teaching of brake effort at various wheels of the vehicle to control tilt and rollover. When wheel lift has started, applying the brakes to control the other wheels causes the bouncing of the vehicle.

For at least the above reasons, the rejection is proper and should be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Y. BEAULIEU

Y. BEAULIEU
PRIMARY EXAMINER

Conferees:

Thomas Black *BB*

Rich Camby *R. C.*